

ALICE SCHLESINGER

JA PART 16

Index Number : 112977/2009

BRENNAN, PHILOMENA

VS.
THE NYC DEPARTMENT OF EDUCATION

SEQUENCE NUMBER : # 001

ARTICLE 78

Justice

INDEX NO.

11297709

MOTION DATE

MOTION SEQ. NO.

#001

MOTION CAL. NO.

were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~

Article 78 petition
and cross-motion are decided in part
on an interim basis in accordance with
the accompanying memorandum decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: MAY 12 2010

Alice Schlesinger

ALICE SCHLESINGER S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
In the Matter of the Application of

PHILOMENA BRENNAN,

Petitioner,

Index No. 112977/09
Motion Seq. No. 001

For An Order and Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules,

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondent.

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SCHLESINGER, J.:

Before this Court is an Article 78 petition wherein the petitioner Philomena Brennan is asking the Court to grant relief vis-a-vis two issues. One issue has to do with her desire to withdraw her resignation, as a teacher with the New York City Department of Education. The resignation occurred on September 5, 2007. The second relief sought is her removal from an Ineligible/Inquiry list where she was placed on February 4, 2009.

Some background is necessary. Ms. Brennan was a tenured teacher at that time she was assigned, in 2006 to Frederick Douglas Academy in Brooklyn. At some point, at the end of the school year, she indicates that she was approached by the principal Tamika Matheson who gave her an unsatisfactory rating, the first one she had ever received. Again, according to the petitioner a discussion between the principal and herself was held and pursuant to that discussion, Ms. Brennan decided to formally resign from her teaching position. In the ensuing period she did some substitute teaching. In January of 2009, after a discussion with others, she decided to take steps to withdraw her resignation.

Again, according to Ms. Brennan, on January 30, 2009 she returned to the Frederick Douglas Academy in order to talk to the principal. She said she saw the principal, was escorted to her office and told to wait a few moments and about ten minutes later she was arrested, handcuffed and charged with the Misdemeanor of Trespass and the Violation of Harassment.

Pursuant to rules, which Ms. Brennan knew, she immediately reported the arrest to the Department. Then, as a result of the arrest, she was placed on an Ineligible/Inquiry list. The presence of one's name on the list makes that person ineligible for rehire or for a teaching assignment. On June 10, 2009 all charges were dismissed against Ms. Brennan. Shortly thereafter, either the next day or very soon after, Ms. Brennan made a formal request to have her name taken off this list. At the time she made that request she produced proof that all charges were dismissed. To this day, May 12, 2010, Ms. Brennan still has not been informed of whether or not her request to have her name struck from the list has been decided. On June 21, 2009 and again in January 2010, Ms. Brennan had what could be categorized as a hearing, but in actuality consisted of a short meeting wherein she again presented documentation that the charges against her were dismissed in their entirety.

She has also made attempts to withdraw her resignation. However, with regard to that relief, there is a condition for such withdrawal, the condition being that the teacher in petitioner's status must show the Department that there has been a written request to fill a vacancy by a regional manager of the department. In other words, it is not simply a ministerial act for the Chancellor to permit a resigned teacher to withdraw that resignation. There is a condition, as stated above, that first must be met. But of course, as petitioner

argues, it is impossible for Ms. Brennan to meet this condition as long as she remains on the Ineligible list.

The respondent argues that with regard to the petitioner's request to have her name struck from the Ineligible list, that request via her Article 78 Petition is time barred. Counsel urges that the four month statute began running on February 4, 2009, when she was first placed on the list. That would mean that the moment that the charges were dismissed on June 9, she would have been barred from asking to have her name removed from the list. Frankly, this is an argument that makes no sense whatsoever. The petitioner pursuant to the responsibilities of a teacher knew that she had to report an arrest and did so. She was not legally aggrieved by her placement on the list in February because the charges were still pending. The time that she became aggrieved was after the charges were dismissed and after she made a demand to have her name removed from the list. Even then she was not yet aggrieved, because she was never given a decision denying her request to remove her name from the list. Therefore, she was not time barred in June 2009 when she made her first request and even though this Court does not have to reach this issue, she is not even time barred now. And certainly when she brought her petition on September 14, 2009 she was not time barred. (*Biondo v. New York State Board of Parole*, 60 NY2d 832 (1983)).

With regard to the withdrawal of her resignation, a resolution of that issue must await a determination of the Ineligible list issue. Therefore, the Court is directing the following.

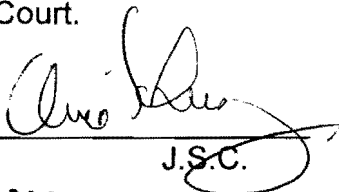
First, the Department of Education is ordered to make a decision with regard to the continuation of Ms. Brennan's name on the Ineligible list within thirty days from today or by

June 16, 2010 and notify petitioner promptly of this. The Department has no right to keep Ms. Brennan in a perpetual state of limbo by not making this decision. If the decision is adverse to her, clear reasons must be stated. I am adjourning this matter until July 7, 2010 at 2:15 p.m. for further consideration of what relief is sought after a decision has been reached.

This decision constitutes the interim order of this Court.

Dated: May 12, 2010

MAY 12 2010



J.S.C.
ALICE SCHLESINGER